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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re N.H., a Person Coming Under the Juvenile
Court Law.

KERN COUNTY DEPARTMENT OF HUMAN
SERVICES,

Plaintiff and Respondent,

v.

K.M.,

Defendant and Appellant.

F063970

(Super. Ct. No. JD125524-00)

OPINION

In re N.H., a Person Coming Under the Juvenile
Court Law.

KERN COUNTY DEPARTMENT OF HUMAN
SERVICES,

Plaintiff and Respondent,

v.

B.H.,

Defendant and Appellant.

F064023

(Super. Ct. No. JD125524-00)

THE COURT*

* Before Cornell, Acting P.J., Kane, J. and Detjen, J.

APPEAL from orders of the Superior Court of Kern County. Louie L. Vega, Commissioner.

Carolyn S. Hurley, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

-ooOoo-

Appellants B.H. (father) and K.M. (mother) appealed from December 2011 orders denying their petitions to terminate a legal guardianship established under Welfare and Institutions Code section 360 for their 13-month-old son N., and to place N. with them.¹ After reviewing the entire record, the parents' court-appointed appellate counsel each informed this court that there were no arguable issues to raise on appeal. Counsel requested, and this court granted, leave for each parent to personally file a letter setting forth a good cause showing that an arguable issue of reversible error does exist. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 844.)

Each parent has since submitted a letter raising virtually identical issues. The parents challenge the representation they received leading up to the order creating the guardianship. They also claim the judge was unfair to them and sided with the legal guardian. The parents additionally criticize the legal guardian for essentially interfering with their visits with N. Further, the parents claim they completed everything that the court asked of them. The parents conclude by requesting to file a supplemental brief raising these issues.

On review, we conclude none of the parents' claims amount to a good cause showing that an arguable issue of reversible error does exist.

FACTUAL AND PROCEDURAL SUMMARY

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The Kern County Department of Human Services (department) detained N. upon his birth in November 2010 and initiated dependency proceedings. The department was aware mother had substance abuse and mental health problems and that she and father previously lost custody of and failed to reunify with other children. Mother previously lost custody of two children because of her mental illness, domestic violence and substance abuse. Despite orders for reunification services, mother did not complete her programs. Mother's parental rights were terminated as to one child, while the other child was placed in her father's custody. Father lost custody of three children due to his willful cruelty and mental illness. He apparently suffered from paranoid schizophrenia. He too failed to regain custody after receiving reunification services. Eventually, a juvenile court placed two of father's children in legal guardianship and the third child in a specialized foster home.

The court later exercised its dependency jurisdiction over N. based on the parents' abuse or neglect of N.'s half-siblings. At an April 2011 dispositional hearing, attorneys for the parents informed the juvenile court that the parents were willing to waive reunification services if N. was placed with his relative, Kimberly L., under legal guardianship. The juvenile court accepted the parents' waivers, denied them reunification services (§ 361.5, subd. (b)(14)), and appointed Kimberly and her spouse as N.'s legal guardians pursuant to section 360, subdivision (a). The juvenile court also ordered visitation between the parents and N. for up to four hours every other week at a location the guardian deemed appropriate.

The guardians later expressed a desire to adopt N. and asked the juvenile court to set a section 366.26 hearing to consider a permanent plan of adoption. The guardians reported that ongoing battles over custody persisted between them and the parents. There were also incidents of family violence and erratic visitation. Mother also was not taking her prescribed medication.

Soon after, the parents' attorneys filed section 388 petitions asking the juvenile court to terminate the guardianship and return N. to parental custody.

In November 2011, the juvenile court reinstated dependency, granted the guardians' section 388 petition and set a section 366.26 hearing.² The court conducted a hearing on the parents' section 388 petitions in December 2011.

A department social worker submitted a report recommending that N. remain with his legal guardians. According to the report, the parents had not successfully mitigated the issues that placed their other children into protective custody. In particular, the parents denied having mental health issues and the need for previously prescribed medication. Also, the trailer home the parents shared with the paternal grandmother was very cluttered and cramped, as well as posed safety concerns.

At the December 2011 hearing, the court heard testimony from each parent, and the guardian Kimberley L.

Mother testified that sometime in 2011, she completed a domestic violence class. She continued to live with father and there had been no incidents of domestic violence. She admitted, however, that she and father got aggravated with each other. She would lock herself in a room to stay away from him. He liked to "pick and nag," but it was "not physical."

Mother believed she and father had addressed the social worker's concerns about their home. N. would have his own room in the trailer. Mother had a bed and clothing for him.

Before the guardianship, she had weekly visits with N. Those visits changed to once a month, because the guardians lived in another county. The parents could have visited twice a month, but they did not have the money for twice-a-month visits. The parents had to ride a bus for several hours each way in order to visit N. It was difficult to

² The parents unsuccessfully petitioned this court to vacate the juvenile court's November 2011 orders. (*B.H. v. Superior Court*, F063714.)

afford the trips. They asked the guardian once or twice to bring N. to see them and offered to pay for gas, but the guardian refused.

Some visits with N. did not occur. Once, N. was reportedly ill. Mother also claimed they missed their first visit apparently because they did not know they needed to travel in order to see N. Mother missed her most recent visit because she did not feel safe.

Mother thought she was “pretty close” to N. During their visits, she held him and he played with her. By contrast, mother was concerned for the guardian’s care of N. Mother claimed Kimberley could “get mean at times” and twice fed N. solid foods that he was not yet ready to eat. Mother admitted she was not currently taking any psychotropic medications. She claimed the doctor who gave her “the meds . . . decided not to.”

Mother also admitted no one forced her to consent to the guardianship.

Father testified that he received social security benefits and his aunt was his payee. There was a family arrangement so that the legal guardian paid his bills from those benefits and gave him whatever money was left each month. The extra money each month ranged from \$50 to \$300. Round trip tickets for him and mother to visit N. cost between \$120 to \$150, depending on how far in advance he purchased the tickets.

The guardian testified that after the April 2011 order for guardianship the parents had one visit with N. at a Bakersfield park. In May, the parents cancelled their second scheduled trip for that month. In June, the father called asking for monthly, rather than twice-a-month visits. The guardian agreed the monthly visits could last between six and eight hours.

The parents visited in June, July, August and September. Then, in early October 2011, the guardian cancelled a scheduled visit because N. was ill. She offered to reschedule the visit but the parents declined because they could not afford it. That was the only visit that did not occur due to the parents’ finances. The guardian brought N. to the parents’ home for a brief visit at the end of October. The parents did not visit N. in

November because mother felt uncomfortable allegedly due to a supposed threat the guardian made sometime over the summer. The parents also cancelled the December visit.

After closing arguments, the juvenile court denied the parents' petitions. It explained circumstances had not significantly changed and in fact the parents had missed several visits. Also, the court could not find it would be in N.'s best interest to terminate the guardianship.

DISCUSSION

An appealed-from judgment or order is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*).) It is appellant's burden to raise claims of reversible error or other defect and present argument and authority on each point made. If an appellant does not do so, the appeal should be dismissed. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.) Although the parents raise multiple issues, none of them are arguable. Thus, we have no reason to reverse the orders in question. (*Ibid.*)

To begin, the parents challenge the legal representation they received apparently at the time they consented to the guardianship. There are two fatal flaws with their challenge. First, the time to complain about the assistance they previously received from their attorneys has passed. In essence, the parents are complaining about their agreement to the April 2011 guardianship order. However, an appeal from the most recent order entered in a dependency matter may not challenge prior orders for which the statutory time for filing an appeal has passed. (*In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 563.) Second, there is no evidence in the record to support the parents' challenge. (*Denham, supra*, 2 Cal.3d at p. 564 [appellant's burden to affirmatively establish error on the record entitling them to relief].)

Next, the parents argue the juvenile court was unfair to them and "sided" with the legal guardian. Once again, there is no evidence to support this argument. Also, the parents overlook the law in this regard. The juvenile court's opportunity to observe the

witnesses and generally get “the feel of the case” warrants a high degree of appellate court deference. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

The parents also argue that many times the guardian did not send them the proper funds to purchase bus tickets for visitation and cancelled six or seven visits. However, there is no evidence in the record to support either of these claims. We remind the parents it is their burden to affirmatively establish error on the record. (*Denham, supra*, 2 Cal.3d at p. 564.)

Last, the parents claim mother completed every service that the court has required. Even if this were true, that would not mean the juvenile court erred by denying the parents’ request to terminate the guardianship and regain custody of N. The parents were required to show that: circumstances had changed or there was new evidence since the court granted the guardianship, and terminating the guardianship would promote N.’s best interests. (§ 388, subd. (b); Cal. Rules of Court, rule 5.570.) Here, there was no evidence that circumstances had changed such that it would be in N.’s best interest to return to the parents’ custody.

Whether the juvenile court should modify a prior order rests within its discretion and its determination may not be disturbed unless there has been a clear abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) On the record before this court as summarized above, there is no arguable claim that the juvenile court abused its discretion.

DISPOSITION

The parents’ requests for supplemental briefing are denied. These appeals are dismissed.